Vidya Devi and ors. Vs. Ram NaraIn and ors.

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Court : Delhi

Decided On : May-24-2010

Judge : Shiv Narayan Dhingra, J.

Appeal No. : F.A.O. No. 2 of 1985 and C.M. Appl. Nos. 233-234/2002 and 5834/2004

Appellant : Vidya Devi and ors.

Respondent : Ram NaraIn and ors.

Advocate for Def. : Varun Kumar and; Navneet Goyal, Advs. for R-2 and; Mohan Ba

Advocate for Pet/Ap. : None

Judgement :

Shiv Narayan Dhingra, J.

1. The present appeal has been preferred by dependents of deceased Sh. Ravi Shankar Updahyay against award dated 14th September, 1984 assailing the quantum of compensation awarded by the Tribunal with a prayer that the compensation should be enhanced. In response, counter objections have been filed by the owner that the Tribunal wrongly held that liability of the insurance company was limited only to Rs. 50,000/- and rest of the amount was recoverable

from the owner. The owner has also assailed the order of the Tribunal on the issue of negligence and quantum of compensation. The appeal has been contested by the insurance company and the stand of insurance company has been that its liability was limited to Rs. 50,000/-.

2. Brief facts relevant for the purpose of deciding this petition are that on 5th June, 1979 Sh. Ravi Shankar Upadhyay was going on his motorcycle bearing No. DEW 7217 from Connaught Place office of DESU to other office of DESU situated at Nizamuddin. When he reached at Nizamuddin crossing, he was hit from behind by mother dairy milk van being driven rashly and negligently by its driver. The deceased, at the time of his death, was working as an engineer with DESU. He was allotted a residential accommodation by his department and was drawing a salary of Rs. 1,018.80 per month at the time of his death. It was proved on record that his next promotion would have been as Assistant Executive Engineer. It was also submitted that he being a brilliant engineer was likely to reach the top. The deceased had left behind his wife and four children. His children at the time of his death were aged between 2 years and 5 years. The learned Tribunal while considering the just and fair compensation deducted 1/3rd of the income towards personal expenses of deceased and calculated dependency of the family at Rs. 720/- per month and applied a multiplier of 16 as the age of the deceased at the time of death was 35 years. Thus, the Tribunal awarded a sum of Rs. 1,38,240/- as compensation. To this amount, Rs. 11,760/- was awarded on account of loss of expectation of life and loss of love and affection and the total compensation awarded was Rs. 1,50,000/-.

3. In order to prove negligence of the milk van bearing No. DHL 502, claimants had examined PW 10 Sh. V.K. Mahajan. PW 9 Sub-Inspector Sh. Om Prakash had done investigation of the case and supported the claimants' case of van driver being negligent. After appreciating the evidence of the witnesses, the Tribunal came to the conclusion that it was the driver of milk van who was negligent. It would be seen that in the written statement, driver had even denied the collusion. The driver of the van did not appear in the witness box in support of his pleading. It was proved before the Tribunal on record that motor cycle was hit from behind. I, therefore, consider that the Tribunal rightly came to the conclusion that the

accident took place due to rash and negligent driving of milk van in question.

4. There is no denial of the fact that the deceased was drawing a salary of Rs. 1,018/- per month at the time of accident. The claimants had also placed on record before the Tribunal the letter of allotment of house allotted to the deceased by his Department in pursuance to his service as mark 4/A. I consider that while considering the income of the deceased, the court has to take real income of the deceased available for himself and for benefit of his family. Since the deceased was allotted residential accommodation for family by DESU, the rental value of the quarter should have been added as his income or the income of the deceased should have been considered in a situation where he had not been allotted a quarter but received House Rent Allowance. During 1980's in Government and Government departments, 10 per cent was the House Rent Allowance being paid to all employees. The salary of the deceased of Rs. 1018.80 being given to him did not include the House Rent Allowance, which deceased would have got had the quarter not been allotted to him. I consider that 10 per cent of the salary was the minimum which should have been added on this count. Thus, around Rs. 100/- would have been added to his monthly salary and his salary should have been taken as Rs. 1118.80 say Rs. 1119/-. Since the deceased had left behind five dependents and all his children were young, aged between 2 and 5 years, their necessities of life would have been such that deceased could not have been able to spend 1/3rd of income on his own expenses even if he was maintaining a motorcycle. I, therefore, consider that deduction of 1/3rd income for his own expenses has been wrongly considered by the Tribunal. As per judgment in Sarla Varma and Ors. v. Delhi Transport Corporation and Anr. : (2009) 6 SCC 121 where dependants were four to six, the deduction for personal expenses should be 1/4th of the income.

5. The deceased was a qualified engineer, he was having a regular job with DESU. It has been brought on record that his next promotion was of Assistant Executive Engineer and his carrier would have progressed along with time. I consider that looking at his age and in view of Sarla Varma's case (supra), in order to compute dependency of the dependents, future prospects of deceased should have been taken into account. In terms of Sarla Varma's case (supra), future

prospects of a person who is below 40 years of age, having permanent job are to be taken as 50 per cent of salary minus tax. As the income of the deceased was below taxable limits, 50 per cent of the salary was required to be considered towards future prospects. Since the deceased was aged 35 years at the time of death, the appropriate multiplier as per Schedule II was 17 and as per Sarla Varma's case (supra) was 16. The Tribunal applied multiplier of 16. Thus, no fault can be found with the multiplier. I consider dependency of claimants would have been Rs. 840/- [Rs. 1,119/- x 3/4] plus 50 per cent (Rs. 420/-) towards future prospects. Thus, the total monthly dependency would have been Rs. 1,260/- (Rs. 840/- + Rs. 420/-). The compensation payable would have been Rs. 2,41,920/- [Rs. 1260/- x 12 x 16].

6. The claimants were also entitled to non-pecuniary benefits like loss of consortium, loss of estate and loss of love and affection as all the children of the deceased were very young, between the age of 2 to 5 years. I, therefore, consider that 10,000/- towards love and affection, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses and other last rites would be the appropriate amount. Thus, the total compensation payable to the claimants would be Rs. 2,66,920/-. I also consider that the claimants would be entitled to interest over this amount @ 8 per cent from the date of filing of claim petition till realization.

7. The next issue which arises is whether the liability of insurance company was limited to Rs. 50,000/- as held by the Tribunal or it was unlimited. The insurance cover would show that a premium of Rs. 236/- was charged from the owner for 'Public Risk' being the basic premium. The tariff rates would show that the premium for minimum 'Act Only Liability' was Rs. 200/- and not Rs. 236/-. The total premium charged from the owner was Rs. 1733/- which included 'Wider Legal Liability' for driver and cleaner as well. This Court in F.A.O. No. 257 of 1991 titled Neeta Trehan and Ors. v. Gopal Krishan and Ors. decided on 17th May, 2010, observed as under:

14. The issue arises whether this insurance cover obtained by the insured was limited to a liability of Rs. 1,50,000/- being the minimum liability for which a vehicle was required to be insured by the owner or this premium covered wider liability.

Counsel for the appellants has drawn my attention to the judgment in Veena Pruthi's case (supra) given by the Division Bench of this Court where the Division Bench of this Court held that if the premium was Rs. 125/-, the liability would be limited to Rs. 1,50,000/- and not unlimited. On the same logic it is stated that if the premium was Rs. 240/- for class A(2) vehicle, the liability of insurance company would be limited to Rs. 1,50,000/-.

15. Where obtaining of an insurance cover is made mandatory by statute, the contract is to be interpreted in the light of statutory provisions. In case of motor vehicles, obtaining of an insurance cover by the owners of vehicles is a statutory requirement. Thus, an insurance policy has to be interpreted keeping in view the statutory provisions and the rules of tariff as framed by the Advisory Board. Under the tariff rules, two separate tariffs are provided for 'Act Only Liability' and for 'Public Risk'. It cannot be said that the Advisory Board provided tariff for 'Act Only Liability' as a superfluous phenomenon. The Advisory Board was having in mind that where the owner wants to take an insurance policy covering the minimum liability under Section 95 of the Act, then the premium should be different. If the owner wants wider liability then the premium should be different and that is the reason that for 'Act Only Liability', a premium of Rs. 200/- was provided and for 'Public Risk', a premium of Rs. 240/- was provided. Public risk is a wider term and takes into account the entire risk faced by the owner for bringing vehicle on road. If there had been no compulsion under the Act to obtain an insurance policy, the only insurance cover which owner could have obtained from an insurance company for covering public risk would have been this that he would pay Rs. 240/- and get the public risk covered. If the Act would have not prescribed any limit, the public risk would naturally have been unlimited. The Act prescribed that every owner of vehicle should get insurance cover covering a minimum amount. Beyond that, the Act did not provide anything. It is under these circumstances that the Tariff Advisory Committee prescribed separate premium for 'Act Only Policy' and separate premium for a 'Public Risk Policy'. I, therefore, consider that the 'Public Risk' premium would cover unlimited amount of risk and would not cover a limited amount of risk..

18. There is another aspect to be kept in mind. When an owner approaches insurance agent for insurance, he is told what would be the tariff payable by him and on payment of tariff, an insurance certificate or cover note is issued. The contract of insurance, thus, stands concluded on receipt of tariff/premium in terms of the tariff schedule as laid down by Advisory Board. Insurance policy is subsequently mailed to owner by insurance company. If insurance company unilaterally inserts a clause in the policy which is contrary to tariff regulations, such a clause is not binding. All insurance policies are in the shape of one standard performa used for different kinds of coverage. If while sending insurance policy to owner the company official does not score off non-applicable clauses or inserts a limited liability clause which is contrary to the tariff charged from owner, such a clause is not binding.

8. I, therefore, consider that liability of insurance company in this case would be unlimited and the claimant would be liable to recover the enhanced compensation from the insurance company. The enhanced amount shall be apportioned amongst the claimants in the same ratio in which the original amount was apportioned.

9. With this, the appeal stands disposed of.